

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**No. CR 22-1358 MIS**

**ELTON GASTELUM,**

**Defendant.**

**SENTENCING MEMORANDUM**

**COMES NOW** Elton Gastelum through his attorney of record, Jess Lilley, and hereby files this sentencing memorandum. Gastelum requests for the Court to sentence him to the low end of the agreement, 10 years. As grounds, Gastelum states:

***Case Background***

In September 2021 Elton Gastelum was 19 years old. He was in the El Paso area with a friend waiting to be contacted to transport aliens. He was provided a SUV and the two picked up aliens in the desert. Too many aliens entered the vehicle so they had to stop shortly after pickup and let some out. Eight remained in the vehicle, seated in the back seat and back cargo area. Gastelum was only vaguely familiar with the border checkpoints in the area. When approaching the checkpoint on Hwy 11, Gastelum did not stop at the checkpoint. He gained speed as border patrol units began to pursue him. He was looking for an exit to pull over so he could let the aliens out. The vehicle swerved, rolled over, and caught fire. Many of the aliens were ejected. One died at the scene and another succumbed to injuries at the hospital several days later. All others had some body trauma. Gastelum was trapped in the vehicle and suffered significant burns, primarily to his legs, and he also had a cracked vertebrae in his neck and an injured arm. Gastelum's memory

of the actual accident is blurry. Because he was looking to take an exit, he thought the accident occurred while he was exiting, but it did not.

Gastelum entered an 11c1B agreement to a range of 10-13 years. A sentence of 10 years is a sufficient but not greater sentence to satisfy §3553 factors. Gastelum has been in federal custody since September 27, 2021, which is almost two years.

### ***Gastelum Injuries***

Gastelum suffered serious burns to his legs and arms in the accident and after a short visit at the hospital in Deming he was flown to the burn center at Univerity Medical University in Lubbock where his burns were treated, as well as a C3 and right arm fractures. At UMC he underwent grafting to repair burned areas. Four days later he was transferred to a rehabilitation hospital in El Paso for continued wound care. Gastelum was treated at the rehab hospital for two month to let his burn and fractures heal. When entering the hospital he was not mobile and could not walk. To date his physical wounds seem to have healed.

### ***Gastelum Background***

Gastelum was born and raised in Albuquerque. He spent all of his life with his twin brother, Ezekiel, and his three younger siblings. They were all raised by his mother, as his father was not around. The spent a lot of time with his mother's family, and he is very close to his maternal grandmother. At about age four, Gastelum and his twin brother were physically assaulted by their mother's boyfriend, so she quickly ended that relationship. He played sports while growing up until breaking an ankle at age 15, which left a void in his life.

About the same time he broke his ankle, Gastelum and his twin brother started hanging around the wrong crowd. They started using alcohol at times, which progressed to cocaine and pills. A friend's father helped them obtain pills and urged Gastelum and his twin to sell. (Note, Gastelum saw the friend's father while he was in custody at Otero after release from the rehab hospital and tried to start a fight with him.) His brother overdosed one time and jumped out of a

moving vehicle, and was never the same after that. Illegal use of pills started to increase. His twin ended up overdosing on Xanax pills that contained fentanyl. Gastelum now only 16/17 years old, dropped out of school, joined a gang, and began abuse pills daily to deal with the loss of his twin. He now knows he has never properly dealt with his brother's death. Gastelum has overdosed three times on fentanyl after losing his brother, and each time spent about one week in the psychiatric ward at UNM hospital in Albuquerque. His mother enrolled Gastelum into the Addiction and Substance Abuse Program at UNM hospital where suboxone was used to try an cure his fentanyl addiction. Unfortunately, the program did not sure his habit. He had no father figure to help with guidance and advice.

Gastelum, now only 21 years old, has previously been diagnosed with PTSD, depression, anxiety, and substance abuse disorder. The DACDC also assessed him with adjustment disorder, which pursuant to the Mayo Clinic website, is behavior such as excessive reactions to stress involving negative thoughts, strong emotions and behavior changes. Additionally, any basic internet search involving the difficulties one twin may have when losing the other twin creates unique issues for the surviving twin to deal with. The psychological loss from losing such an emotional and physical attachment if often far greater than a normal family loss. Gastelum is clearly still suffering and has never appropriately deal with it. In January 2023 Gastelum overdosed at the DACDC on fentanyl brought into the facility and had to be given four doses of Narcan. He has talked to friends on the phone while in custody and at times plays the tough guy. His friends still post on social media in support of him and a street lifestyle. Risky behavior, bad choices, bad associations, and continued drug use are now still filling a void in his life.

Gastelum has not yet matured into an adult. Most believe brain maturation is not complete until your mid 20s. <https://hr.mit.edu/static/worklife/youngadult/brain.html> "Traumatic events, such as abuse, neglect, severe deprivation, and exposure to violence, take a costly toll. Young adults with a history of trauma are vulnerable to getting "stuck" developmentally, or to growing

more slowly and/or unevenly than otherwise.” *Id.* “ Growing evidence points to the serious impact of chronic substance abuse on young adult development. Recent research is demonstrating ways in which alcohol and other drugs affect the growing brain, causing damage that may or may not be possible to repair.” *Id.* Gastelum falls in both the chronic substance abuse and traumatic event categories stunting brain maturation.

### ***Conclusion***

There is no excuse for Gastelum running from the border patrol, and it has cost the lives of two and injured many others. However, it was not an intentional act to hurt anyone. It was a reaction in the moment to somehow try to get himself out trouble and to get his passengers out of the vehicle. It was not thought out or planned. It is assumed the Government will emphasize Gastelum’s conduct while incarcerated over the last two years-- his phone calls, contact with old friends, drug use, etc. is somehow evidence he is not taking the charges seriously, does not care, is not changing, and has no remorse. Such approach only adds to the arguments above. He is still a kid that has made a big mistake. If the Court could spend 30 minutes with Gastelum talking about his life, his brother, his family, and his decision-making process it would see he is still young and somewhat naïve. It would see he does not come across as a tough guy with a know-it-all attitude. It would see a young man with a smile who understands he will have to atone for the choices he has made, and who is sorry for the loss of life and injuries suffered because of him.

Ten years in prison is appropriate.

Respectfully Submitted,

*E-filed August 22, 2023*

/s/ Jess R. Lilley

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was e-filed to opposing counsel this 22<sup>nd</sup> day of August, 2023, to wit:

Randy Castellano  
Christopher McNair  
U.S. Attorney's Office

/s/ Jess R. Lilley